

# State of Missouri

## Office of Secretary of State

Case No. AP-05-06

IN THE MATTER OF:

Miller Capital Management, Inc.  
4650 College Blvd., Suite 201  
Overland Park, KS 66211,

Respondent,

### **CONSENT ORDER**

1. The Missouri Securities Division alleges that Miller Capital Management, Inc. engaged in activities as an unregistered investment adviser and employed an unregistered investment adviser representative in violation of §409.4-403, RSMo Cumulative Supp. 2004.
2. Miller Capital Management, Inc. desires to settle the allegations and the matters raised by the staff of the Securities Division relating to Miller Capital Management, Inc.'s alleged unregistered investment advisory activities.
3. Miller Capital Management, Inc. and the Securities Division consent to the issuance of this Consent Order.
4. Miller Capital Management, Inc., without admitting nor denying it violated Missouri law, stipulates and agrees to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
5. Miller Capital Management, Inc. waives its right to a hearing with respect to this matter.
6. Miller Capital Management, Inc. stipulates and agrees that it waives any rights that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Further, Miller Capital Management, Inc. specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to or relating to this matter.
7. Miller Capital Management, Inc. stipulates and agrees that, should the facts contained herein prove to be false or incomplete, the Missouri Division of Securities preserves the right to pursue any and all legal or administrative remedies at its disposal.

## **STIPULATIONS OF FACT**

8. Miller Capital Management, Inc. is an investment adviser with an address of 4650 College Blvd., Suite 201, Overland Park, KS 66211.
9. Miller Capital Management, Inc. is not currently registered as an investment adviser in the State of Missouri.
10. Miller Capital Management, Inc. opened an office in Missouri from July 2004 to May 2005 believing it was in compliance with Missouri's de minimus rule §409.4-403(b) (2).
11. From July 2004 to May 2005, Miller Capital Management, Inc. employed an unregistered investment adviser representative who transacted business on behalf of the firm under the erroneous belief Miller Capital Management, Inc. was acting within the Missouri de minimus rule.
12. Miller Capital Management, Inc. had 5 pre-existing clients that were Missouri residents at the time it opened a Missouri office.

## **JURISDICTIONAL BASIS**

13. Miller Capital Management, Inc. and the Securities Division stipulate and agree that the Commissioner has jurisdiction over these matters pursuant to the Missouri Securities Act, Chapter 409, et al.
14. Miller Capital Management, Inc. and the Securities Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to §409.6-604(h), RSMo Cumulative Supp. 2004, which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

## **ORDER**

**WHEREAS**, the Commissioner, after consideration of the stipulations set forth above and on the consent of Miller Capital Management, Inc. and the Securities Division, finds the following Order to be in the public interest, necessary for the protection of public investors and consistent with the provisions of Chapter 409, et al.

**NOW, THEREFORE**, it is hereby Ordered that:

1. Miller Capital Management, Inc. is prohibited from conducting business as an investment adviser and employing investment adviser representatives pursuant to §409.4-403, RSMo Cumulative Supp. 2004 until becoming registered in the State of Missouri.
2. Miller Capital Management, Inc. shall pay \$3,000 to the Missouri Secretary of State's Investor Education and Protection Fund. Such amount shall be immediately due and payable.
3. Miller Capital Management, Inc. shall pay its own costs and attorneys fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 13<sup>th</sup> DAY OF JUNE, 2005.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
DAVID B. COSGROVE  
COMMISSIONER OF SECURITIES

Consented to by:

PHILIP TOBEN  
CHIEF REGISTRATION COUNCIL  
MISSOURI DIVISION OF SECURITIES

Miller Capital Management, Inc.